

Remarks

Claims 1-70 were previously canceled. Claim 71 is presently canceled. Claims 72 and 73 are presently amended. Claims 72 and 73 are pending in this application. The Examiner has rejected claim 71 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,787,000 to Lilly, et al. (hereinafter "Lilly") in view of U.S. Patent No. 5,712,989 to Johnson, et al. (hereinafter "Johnson") and further in view of Manugistics5, as disclosed in "Manugistics Introduces Industry's Only Extended Supply Chain Management Solution," in view of Official Notice in view of Layden ("A Rapidly Changing Landscape"). Claims 72 and 73 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 7,346,530.

A. Remarks Regarding Double Patenting Rejection

Claims 72 and 73 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 7,346,530. The Examiner states:

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 72 and 73 introduce the subject matter deemed to be allowable in U.S. Patent No. 7,346,530. Claims 72 and 73 are dependent from claim 71. . . . Claims 72 and 73 would be allowable if rewritten to overcome the Double Patenting rejection, set forth in this Office action and to include all the limitations of the base claim and any intervening claims.

(Office Action at 11.)

Applicants include herewith a Terminal Disclaimer to Obviate a Double Patenting Rejection Over a "Prior" Patent. Applicants submit that the submission of this terminal disclaimer obviates the double patenting rejection of U.S. Patent No. 7,346,530. Applicants hereby authorize and instruct the U.S. Patent and Trademark Office to charge Deposit Account

No. 02-0383 (matter 016295.1099) of Baker Botts L.L.P. in the amount of \$140.00 for the Terminal Disclaimer fee.

B. Remarks Regarding Allowable Subject Matter

The Examiner stated that claims 72 and 73 would be allowable if rewritten to overcome the double patenting rejection and to include all limitations of the base claim. (Office Action at 11.) Applicants amended claims 72 and 73 to include all limitations of the base claim—claim 71.

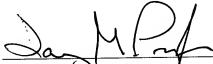
C. No Waiver

All of Applicants' arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the cited references. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by examiner, Applicants do not acquiesce to examiner's additional statements, such as, for example, any statements relating to what would be obvious to a person of ordinary skill in the art. The example distinctions discussed by Applicants are sufficient to overcome the anticipation rejections. The current amendments to the claims are sufficient to overcome the novelty and obviousness rejections.

Conclusion

Applicants respectfully submit that the pending claims 72 and 73 of the present invention, as amended, are allowable. Applicants respectfully request that the rejection of the pending claims be withdrawn and that these claims be passed to issuance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tammy M. Pennington', is written over a horizontal line.

Tammy M. Pennington
Registration No. 61,223

Baker Botts L.L.P.
910 Louisiana
One Shell Plaza
Houston, Texas 77002-4995
(713) 229-1972
tammy.pennington@bakerbotts.com

Baker Botts Docket Number: 016295.1099

Date: February 26, 2009